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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:

Artel Chemical Site
West 19th Street
Nitro, West Virginia

American Cyanamid Company
1 Cyanamid Plaza
Wayne, NJ 07470

RESPONDENT

Proceeding under Section 106 of the
Comprehensive Environmental Response,
Compensation, and Liability Act of
1980, 42 U.S.C. Section 9606, as
amended by the Superfund Amendments
and Reauthorization Act of 1986,
Pub. L. No. 99-499, 100 Stat.
1613 (1986).

Original Order

Docket No. III-88-40-DC

CONSENT AGREEMENT AND ORDERI. JURISDICTION

1. This Consent Agreement and Order ("Consent Order or Order") is issued pursuant to the authority vested in the President of the United States under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. Section 9606, as delegated to the Administrator of the Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (1987), and further delegated to the Regional Administrators of EPA by Delegation No. 14-14-C, signed on February 26, 1987. The actions authorized by this Consent Order are consistent with Section 300.65 of the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Section 300.65, if carried out in compliance with this Consent Order.

2. The Respondent, American Cyanamid Company, agrees to undertake all actions required by the terms and conditions of this Consent Order.

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II. STATEMENT OF PURPOSE

3. In entering into this Consent Order, the mutual objectives of EPA and Respondent are to remove from the Facility, as described below, certain chemicals also described below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. American Cyanamid is a corporation incorporated in Maine and doing business in the State of West Virginia.

5. The site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6. The Facility, located at West 19th Street in Nitro, West Virginia, is owned by Artel Chemical, Inc., (Artel).

7. Artel, at all times pertinent to this Consent Order, has been the owner and operator of the facility.

8. The facility is located in an industrial area on the outskirts of Nitro, West Virginia. It is bordered on the north by an industrial park, the south by industry and a public recreation area, the east by a Conrail yard and the business district of Nitro, and the west by industry and the Kanawha River. The business district of Nitro is approximately 150 yards to the east and the Nitro Municipal Swimming Pool is approximately 100 yards to the southwest.

9. On June 10, 1988, EPA was contacted by the West Virginia Department of Natural Resources (DNR). DNR stated that the facility had been abandoned due to non-payment of workers and the shut-off of utilities. DNR requested that EPA conduct appropriate emergency actions at the site.

10. From June 11 to the present, EPA has been assessing the site. Problems found include, but are not limited to, methyl mercaptan stored in a tank in questionable condition, and storage of sulfuric acid in a rail car.

11. Methyl mercaptan is highly toxic to humans, very dangerous when exposed to heat, and will react with water, steam, or acids to produce toxic and flammable vapors.

12. Sulfuric acid is a severe irritant. It is corrosive and toxic to tissue. Contact with the body results in the rapid destruction of tissue, causing severe burns. Sulfuric acid is a powerful acidic oxidizer which can ignite or explode on contact with many other hazardous substances. It is dangerous when heated and emits highly toxic fumes.

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13. The Respondent is a "person" as defined in Section 101(21) of CERCLA, as amended, 42 U.S.C. Section 9601(21).

14. The substances found at the Facility, as described in Paragraphs 11 and 12, above, are "hazardous substances" as defined in Section 101(14) of CERCLA, as amended, 42 U.S.C. Section 9601(14).

15. The migration and/or potential migration of hazardous substances into the environment at or from the Facility constitutes an actual and/or threatened release, as defined in Section 101(22) of CERCLA, as amended, 42 U.S.C. Section 9601(22).

IV. DETERMINATIONS

16. Based on the Findings of Fact and Conclusions of Law set out above, the Regional Administrator has determined that:

17. There may be an imminent and substantial endangerment to the public health or welfare and/or the environment due to the release and/or threatened release of hazardous substances at and from the Facility.

18. The actions required by this Consent Order which the Respondent has agreed to perform are necessary to protect the public health, public welfare and/or the environment.

V. PARTIES BOUND

19. This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors and assigns, and upon all persons, contractors and consultants acting under or for either the Respondent or EPA, or any combination thereof. The Respondent will remain the Respondent under this Consent Order and will be responsible for carrying out all activities required of the Respondent under this Consent Order. The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order.

VI. NOTICE TO THE STATE

20. Notice of issuance of this Consent Order has been given to the State of West Virginia pursuant to Section 106(a) of CERCLA, as amended, 42 U.S.C. Section 9606(a).

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VII. WORK TO BE PERFORMED

21. Based on the foregoing, it is hereby AGREED TO AND ORDERED THAT:

22. Within five (5) business days after the effective date of this Consent Order, Respondent will submit to the EPA OSC and the EPA Project Manager (EPA PM) for review and approval a complete and detailed statement of work, safety plan, and schedule. These documents will detail how the Respondent intends to remove the rail car of sulfuric acid from the facility and off load the methyl mercaptan from its present container, decontaminate the container, and remove the methyl mercaptan from the facility. Upon approval by the OSC, Respondent will execute the work in compliance with the schedule.

23. All decontamination of equipment, except for the rail car used for the transportation of sulfuric acid and the tank car used for the transportation of methyl mercaptan, must occur at the Facility. Individuals performing decontamination activities will follow a general and a task specific site safety plan approved by the OSC.

24. All hazardous substances, including those in decontamination solutions, used or generated during decontamination efforts shall be disposed of by Respondent in accordance with all Federal, State, and local requirements.

25. (a) With regard to those hazardous substances removed from the site which are disposed of offsite, the Respondent shall submit to the EPA within seven (7) days of the completion of such disposal, copies of all manifests and other similar documents in its possession which were generated in connection with the transportation, storage, treatment, and/or disposal operations.

(b) With regard to those hazardous substances removed from the site for use or reuse offsite, the Respondent shall submit to EPA, within seven (7) days of delivery of such substances to the site at which they will be used or reused, copies of all manifests and other similar documents in its possession which were generated in connection with the transportation, storage, treatment, and/or use or reuse operations.

26. Upon Respondent's completion of the activities required of Respondent in paragraphs 22 through 25, Respondent shall submit to EPA a letter certifying that it has completed all such activities.

27. Documents including reports, approvals, disapprovals, and other correspondence to be submitted pursuant to this Consent Agreement and Order, shall be transmitted as follows:

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- (a) By Certified Mail to the following:
Dr. Walter F. Lee, Project Manager
CERCLA Removal Enforcement Section (3HW14)
U.S. EPA, Region III
841 Chestnut Building, 6th Floor
Philadelphia, PA 19107

Mr. Raymond C. Merrell, Project Manager
American Cyanamid Company
1 Cyanamid Plaza
Wayne, NJ 07470

- (b) Copies shall also be sent at the same time by regular mail to the following:

OSC
Command Trailer
Artel Site
West 19th Street
Nitro, West Virginia

Office of the Secretary
American Cyanamid Company
1 Cyanamid Plaza
Wayne, NJ 07470

- (c) At the option of Respondent, the copy for the OSC under (b), above, may be hand delivered.

VIII. DESIGNATED PROJECT MANAGER

28. The individuals designated pursuant to Paragraph 27, above, shall be the Project Managers (PMs) for EPA and the Respondent, respectively. The EPA PM or his designee shall be responsible for overseeing the implementation of this Consent Order. Respondent's Project Manager shall be responsible for coordinating and overseeing Respondent's performance under the terms of this Consent Order.

29. EPA and the Respondent shall each have the right to change their respective Project Manager. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

30. In the event that EPA's PM is absent from the Facility, he shall appoint an EPA-authorized representative to act in his stead during the period of his absence. The mere physical absence of the EPA PM or his authorized representative from the Facility, however, shall not be cause for the stoppage of work.

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IX. DATA AND DOCUMENTS SUBMISSIONS

31. The Respondent may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. Section 2.203(b) at the time the information is submitted. Analytical data shall not be claimed as confidential by the Respondent. Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to the EPA, it may be made available to the public by the EPA without further notice to the Respondent.

X. RECORD PRESERVATION

32. The Respondent shall preserve, during the pendency of this Consent Agreement and Order and for a minimum of six (6) calendar years after its termination, all records and documents in its possession which relate in any way to the work performed hereunder, despite any document retention policy to the contrary. Upon request by EPA, the Respondent shall make available to EPA such records or copies of any such records, subject to any privilege that may be available under Federal law. The Respondent shall produce for EPA's review a list identifying and describing the information which it claims is privileged within 10 days of request by EPA. However, no privilege shall be asserted as to any sampling, monitoring, and analytical data or any reports, plans, schedules, or other submissions which are required pursuant to this Consent Order.

XI. EPA ON-SCENE COORDINATOR

33. The EPA On-Scene Coordinator (EPA OSC) is the individual in charge and control of all response actions at the Facility.

34. Respondent agrees that the EPA OSC, the EPA PM, and their authorized representatives may, at any time, order the Respondent to cease or modify any activities at the Facility and hereby agrees to such suspension or modification of activities. Respondent also agrees that the EPA OSC may in his discretion, implement the work required by this Consent Order. The EPA shall notify the Respondent, in writing, of the reason(s) for the suspension, modification of activities, and/or takeover by the Federal government.

XII. LIABILITY OF THE UNITED STATES GOVERNMENT

35. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, AR100075

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or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to, firms, corporations, subsidiaries, contractors, sub-contractors, or consultants in carrying out activities pursuant to this Consent Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities pursuant to this Consent Order.

XIII. RESERVATION OF RIGHTS

36. Respondent neither admits nor denies the jurisdiction of EPA or the Findings of Fact or Conclusions of Law contained in this Consent Order; however, for purposes of enforcing this Consent Order, Respondent will not contest these issues. However, Respondent specifically does not agree to the findings in paragraphs 11 and 12 of this Consent Order. The participation of the Respondent in this Consent Order shall not be admissible by EPA against Respondent in any judicial or administrative proceeding, except for actions by EPA to enforce the terms of this Order, or, actions, to which EPA is a party, which allege injury based, in whole or in part, on acts or omissions of the Respondent in connection with its performance under this Consent Order.

37. The Respondent and EPA expressly reserve all rights and defenses not specifically waived by this Consent Order. The rights reserved by EPA include, but are not limited to, the right to seek monetary penalties or other relief for any violation of law or this Consent Order; the right to issue additional Orders under Section 106(a) of CERCLA, as amended, 42 U.S.C. Section 9606(a); take necessary response action under Section 104(a) of CERCLA as amended, 42 U.S.C. Section 9604(a); and the right to bring a civil action under Section 106(a) of CERCLA, as amended, 42 U.S.C. Section 9606(a), and/or Section 107 of CERCLA, as amended, 42 U.S.C. Section 9607. The rights reserved by the Respondent include, but are not limited to, its right to assert any claims, demands or defenses against any person not a party to this Consent Order in connection with its actions taken hereunder.

38. The parties acknowledge that on August 5, 1988, Respondent was given oral approval by Larry Westreich, authorized representative for Artel Chemical, Inc., to remove methyl mercaptan from the Facility.

XIV. FORCE MAJEURE

40. Any delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on Respondent's part, shall not be deemed to be a violation of this Consent Order. However, Respondent shall notify EPA as soon as possible when it anticipates or becomes aware of such a delay.

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XV. OTHER CLAIMS

41. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

42. This Consent Order does not constitute any decision on preauthorization of funds under Section 111 (a)(2) of CERCLA, as amended, 42 U.S.C. Section 9611(a)(2). By entering into this Consent Order, Respondent waives any right it may have to reimbursement under Section 106(b)(2)(A) of CERCLA, as amended, 42 U.S.C. Section 9606 (b)(2)(A).

XVI. OTHER APPLICABLE LAWS

43. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

44. The effective date of this Consent Order shall be the date on which a certified copy of the Order, signed by the Regional Administrator for Region III, is received by the Respondent's PM.

45. This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as the effective date that date on which Respondent receives a copy of the amendments signed by EPA.

46. Any reports, plans, specifications, schedules, and attachments required by this Consent Agreement and Order are, upon Respondent's receipt of EPA's notice of approval, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules and attachments shall be considered a failure to achieve the requirements of this Consent Order.

47. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

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XVIII. TERMINATION AND SATISFACTION

48. The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall terminate when the work required of Respondent by this Consent Order has been completed to the satisfaction of EPA and Respondent has been so notified in writing. Such notice shall be promptly provided by EPA.

IT IS SO AGREED AND ORDERED:

BY: *F.V. AtLee*
AMERICAN CYANAMID COMPANY
F.V. AtLee, Executive Vice President

August 10, 1988
DATE

BY: *James M. Seif*
JAMES M. SEIF
REGIONAL ADMINISTRATOR
US ENVIRONMENTAL PROTECTION AGENCY
REGION III

August 12, 1988
DATE

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